

NIH POLICY MANUAL

2300-630-5 FAMILY LEAVE POLICIES AND PROGRAMS

Issuing Office: OD/OHR/DESB 496-2404

Release Date: 5/15/97

1. **Explanation of Material Transmitted:** This chapter provides guidelines and requirements for handling all requests for leave for family responsibilities.

2. **Filing Instructions:**

Remove: NIH Manual 2300-630-5 dated 10/25/93

Insert: NIH Manual 2300-630-5 dated 05/15/97 (Keep this transmittal sheet as long as **any** pages of this chapter are in effect.)

3. **Distribution:** This information is distributed via electronic means only on the OHRM website at:
<http://www1.od.nih.gov/ohrm/>

PLEASE NOTE: For information on:

- * **content of this chapter,** contact your **ICD Personnel Office.** ICD Personnel Offices contact the **issuing office** listed above.
- * **NIH Manual System,** contact the **Office of Management Assessment,** OA on 6-2832.

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS
Table of Contents

- A. Purpose
- B. Coverage
 - 1. Family and Medical Leave Act (FMLA)
 - 2. Federal Employees Family Friendly Leave Act (FEFFLA)
- C. References
- D. Definitions
- E. Responsibilities
- F. Family Leave Policies and Programs
 - 1. FMLA
 - 2. FEFFLA
 - 3. Expanded Family and Medical Leave Policies
 - 4. Pregnancy and Childbirth
 - 5. Leave for Adoptive or Foster Parents
 - 6. Leave for Bone-Marrow or Organ Donations
 - 7. Voluntary Leave Transfer Program
 - 8. Compensatory Time
 - 9. Miscellaneous Absence for Family Care
- G. Other Alternatives
 - 1. Credit Hours
 - 2. Advance Leave
- H. Health Benefits Coverage
- I. Recordkeeping and Reporting Requirements

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

A. PURPOSE: This chapter addresses NIH policy as it relates to Title II of the Family and Medical Leave Act of 1993 (FMLA) and the Federal Employees Family Friendly Leave Act (FEFFLA). It also addresses other leave provisions and programs which support NIH employees in their efforts to balance their job and family responsibilities. This policy supplements and should be used in conjunction with regulations and policy provided in 5 CFR 630 and HHS Instruction 630-1.

B. COVERAGE:

1. **FMLA:** All full-time and part-time NIH employees with at least three months of civilian service and who are covered by the Federal leave system (see 5 U.S.C., 6301(2)) are covered by this chapter, under Title II of the FMLA. The following employees are **not** covered.

- a. Public Health Service (PHS) Commissioned Corps Officers;
- b. employees with intermittent appointments;
- c. employees with temporary appointments of less than 13 months;
- d. individuals not appointed by the Government, e.g.;
 - i. Intramural Research Training Award Fellows;
 - ii. Guest Researchers;
 - iii. Visiting Fellows; and
 - iv. Special Volunteers.

Intermittent employees and temporary employees with appointments of less than 13 months are covered under the Department of Labor (DOL) regulations prescribed in Title I of the FMLA. These employees' requests for leave will be administered by the NIH in accordance with DOL regulations and are not addressed in this Chapter.

In cases where there is exclusive recognition of an employee organization with a negotiated agreement which

NIH MANUAL 2300-630-5 PAGE 2

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

Provides greater entitlements, the articles of the agreement relating to the FMLA apply.

2. **FEFFLA:** All full and part-time NIH employees who are covered by the Federal leave system (see 5 U.S.C. 6301(2)) are covered by this chapter, regardless of length of service.

In cases where there is exclusive recognition of an employee organization with a negotiated agreement which provides greater entitlements, the articles of the agreement relating to the FEFFLA apply.

C. REFERENCES:

1. 5 U.S.C., Chapter 63 "Leave"
2. Title 5, Code of Federal Regulations, Part 630 "Absence and Leave"
3. HHS Instruction 630-1, "Leave and Excused Absence"
4. HHS Instruction 610-3, "Temporary Closing of Work Places and Treatment of Absences"
5. HHS Instruction 550-1, "Premium Pay"
6. HHS Instruction 550-11, "Compensatory Time Off For Religious Observances"
7. HHS Instruction 610-1, "Establishing and Administering Work Hours, Work Weeks, and Work Schedules"
8. NIH Personnel Delegations of Authority, dated 2/21/96, Title 5, Personnel Administration and Management Authorities, category L, available in each ICD Personnel Office or in the Office of Human Resource Management, Division of ICD Consulting.

D. DEFINITIONS:

1. Throughout this chapter, these words have the following meanings:

- a. must, shall and will are used to indicate requirements;

NIH MANUAL 2300-630-5

PAGE 3

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

- b. may and should are not requirements but are used to indicate recommendations.

2. **Accrued Leave:** Accrued leave is leave earned by an employee during the current leave year that is unused at any given time in that leave year.
3. **Accumulated Leave:** Accumulated leave is unused leave remaining to the credit of an employee at the end of a leave year which is carried over to the beginning of the next leave year.
4. **Advance Leave:** Advance leave is authorized absence from duty which is charged to sick or annual leave before that leave is actually earned.
5. **Annual Leave:** Annual leave is authorized absence from work to allow employees vacation, or a period of extended absence for rest and relaxation, and to provide periods of time off for personal and emergency situations. Annual leave is earned each pay period. The amount earned is based on number of hours worked and eligibility to earn annual leave is based on length of service.
6. **Compensatory Time:** Compensatory time is time off from work earned in lieu of pay for overtime work performed. It may be substituted only for irregular or occasional overtime. The approval to earn and use compensatory time must be granted in advance and fit into the needs of an organization.

Federal Wage System employees (WG, WL, WS, etc.), as well as employees whose rate of basic pay is greater than the maximum rate for a GS-15, are excluded from earning and using compensatory time.

7. **Credit Hours:** Credit hours are hours in excess of the basic work requirement which an employee who is under a flexible work schedule elects to work,

with supervisory approval, so as to vary the length of a workday or workweek.

NIH MANUAL 2300-630-5

PAGE 4

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

8. **Employee:** An employee is an individual who is appointed in the civil service, engaged in the performance of a Federal function and subject to the supervision of another Federal employee, or an employee paid from non-appropriated funds (see 5 U.S.C. 6301).
9. **Family member:** Under the FMLA, family member is defined as spouse (husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in states where it is recognized), son or daughter (including adopted or foster children, stepchildren or a legal ward), or parent. This term does **not** include "parents-in-law".

Under the FEFFLA or Leave Sharing Programs, family member means spouse (husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in states where it is recognized), and parents thereof; children (including adopted or foster children, stepchildren or a legal ward), and spouses thereof; parents; brothers and sisters and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

10. **Health Care Provider:** For the purpose of this chapter, a health care provider is a licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations; any provider recognized by the Federal Employees' Health Benefits Program (FEHBP) or who is licensed or certified under Federal or State law to provide the service in question; a Federal or State licensed or certified provider, recognized by the FEHBP, who practices in a foreign country; a Native

American traditional healing practitioner; or a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

11. **Incapacity:** The inability to work, attend school, or perform other regular daily activities because of a

NIH MANUAL 2300-630-5

PAGE 5

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

serious health condition or treatment for or recovery from a serious health condition.

12. **Leave-Approving Official:** The leave-approving official is the person with the delegated authority to approve leave requests. This individual is generally the employee's immediate supervisor.

13. **Leave Without Pay (LWOP):** LWOP is an authorized absence from duty which results in a non-pay status. An employee must request the use of LWOP. It may be granted when the employee has insufficient annual leave, sick leave accrued credit hours or compensatory time to cover an approved absence. However, an employee is not required to have a zero leave balance to request LWOP.

14. **Medical Documentation or Certification:** For the general purpose of this chapter, medical documentation or certification is evidence which may be required by the supervisor in support of a request for leave due to an employee's illness or due to the illness of a family member. Medical documentation or certification is defined as a written statement signed by a health care provider (see D.10 above) certifying to the incapacitation, examination, or treatment; and, if appropriate, to the period of disability of the employee or family member. It should be sufficiently specific for the leave-approving official to make a reasonable decision concerning the appropriateness of granting leave. More extensive documentation may be required, as considered appropriate by the leave-approving official.

For purposes of the FMLA, medical documentation or certification is written information supplied by the

health care provider of the employee or the health care provider of the employee's family member which includes: the date the serious health condition commenced; the probable duration of the serious health condition; and medical facts regarding the serious health condition, including a general statement as to the incapacitation, examination or treatment that may be required by a health care provider.

NIH MANUAL 2300-630-5

PAGE 6

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

For leave requested due to the serious health condition of the employee, it should include a statement that the employee is unable to perform any one or more of the essential functions of his/her position.

In the case of leave requested for care of a family member with a serious health condition, this documentation should include a statement from the health care provider that: the family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety or transportation needs; and would benefit from the employee's care or presence. In addition, there should also be a statement from the employee on the care he/she will provide and an estimate of the amount of time needed to care for the family member. In the event the employee is requesting intermittent leave or leave on a reduced leave schedule (a work schedule that is reduced by the number of hours of leave taken as family and medical leave) for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment should be provided.

15. **Serious Health Condition:** Under the FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or (b) continuing treatment by a health care provider that includes, but is not limited to, examinations to determine if there is a serious health condition and evaluations of such

conditions if the examinations or evaluations determine that a serious health condition exists.

Continuing treatment by a health care provider may include one or more of the following.

- (a) Any period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

NIH MANUAL 2300-630-5

PAGE 7

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

- (1) treatment two or more times by (or under the supervision of) a health care provider; or
 - (2) treatment by (or under the supervision of) a health care provider on at least one occasion which results in a regimen of continuing treatment.
- (b) Any period of incapacity due to pregnancy, or for prenatal care.
 - (c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:
 - (1) requires periodic visits for treatment by a health care provider;
 - (2) continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (3) may cause episodic rather than a continuing period of incapacity; e.g., asthma, diabetes or epilepsy.
 - (d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; e.g., Alzheimer's, severe stroke, or terminal stages of a disease.
 - (e) Any period of absence to receive multiple

treatments (including any period of recovery) by a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment; e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease.

Other examples of a serious health condition include but are not limited to: heart attacks; heart conditions involving bypass or valve operations; most cancers; back conditions requiring extensive therapy or surgery;

NIH MANUAL 2300-630-5

PAGE 8

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

severe respiratory conditions; spinal injuries; appendicitis; pneumonia; emphysema; severe arthritis; severe nervous disorders; injuries caused by serious accidents on or off the job; pregnancy; miscarriages; complications or illnesses related to pregnancy (e.g. severe morning sickness); the need for prenatal care; childbirth; and recovery from childbirth.

Conditions **not** considered a serious health condition include: routine physical, eye or dental examinations; conditions where over-the-counter medicines and/or bed rest are initiated without a visit to a health care provider; voluntary or cosmetic treatments that are not medically necessary; and surgical procedures that typically do not involve hospitalization and require only a brief recovery period.

In addition, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), allergies, restorative dental or plastic surgery after an injury, or mental illness resulting from stress may be serious health conditions **only** if complications develop or if such conditions require inpatient care or continuing treatment by a health care provider.

16. **Sick Leave:** Sick leave is authorized absence from work for an employee: who is incapacitated for work because of illness, injury, or pregnancy and confinement; who

is undergoing medical, dental or optical examination or treatment; who is caring for a family member under the FEFFLA as a result of physical or mental illness, injury, pregnancy and childbirth, medical, dental or optical examination or treatment; who is making arrangements necessitated by the death of a family member, including attendance at the funeral; who must be absent from duty for purposes relating to the adoption of a child; or who has been exposed to a contagious disease. Sick leave is also appropriate when, through exposure to a communicable disease, the presence of the employee at his/her duty station would jeopardize the health of others. Sick leave is earned in fixed increments each pay period based on number of hours worked.

NIH MANUAL 2300-630-5

PAGE 9

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

The terms "**maternity leave**" and "**paternity leave**" are deliberately not used in this chapter because they imply separate leave categories which do not exist in the Federal system.

E. RESPONSIBILITIES:

1. **ICD Directors:** ICD Directors (or their designees) are responsible for administering the NIH policies and procedures on family leave. They are also responsible for assuring that appropriate staff are in compliance with recordkeeping and reporting requirements.
2. **ICD Personnel Offices:** ICD Personnel Offices are responsible for providing information, guidance, and training regarding family leave policies and procedures to ICD staff. They are also responsible for providing information on the use of family leave to the Office of Human Resource Management upon request.
3. **Office of Human Resource Management (OHRM):** The OHRM is responsible for providing technical guidance to the ICD Personnel Offices and for developing written policy concerning family leave laws and regulations.
4. **Leave-Approving Officials:** Leave-approving officials are responsible for approving or disapproving leave

requests, the earning and use of credit hours and/or compensatory time, and requests for advance leave. They are responsible for administering leave policies equitably and reasonably. They must ensure that all employees under their supervision are informed of the procedural requirements that must be followed in requesting and using leave. They must ensure that absences from duty are appropriately charged according to laws and regulations.

Leave-approving officials are also responsible for confirming that an employee is invoking his or her entitlement to FMLA leave before subtracting any hours of leave from the employee's entitlement. This confirmation should be ascertained in advance.

NIH MANUAL 2300-630-5

PAGE 10

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

5. **Employees:** Employees are expected to be dependable and regularly report for work. They are responsible for providing notice of and requesting and obtaining advance approval for all anticipated absences. They are responsible for providing adequate and acceptable medical documentation, when applicable.

Employees are also responsible for notifying their supervisors and requesting approval for any unexpected need for absence within a reasonable period of time appropriate to the circumstances involved.

Under FMLA, when the need for leave is foreseeable, an employee must provide notice of intent to use and a request for the leave not less than 30 days before the leave is to be taken. If the need for leave is not foreseeable, the employee shall notify his/her leave-approving official of their intent to take leave within a reasonable period of time appropriate to the circumstances involved or as soon as is practicable.

F. FAMILY LEAVE POLICIES AND PROGRAMS:

1. **Family Medical Leave Act (FMLA):** In conjunction with the FMLA, employees are entitled to and leave-approving officials must grant up to 12 weeks of **unpaid leave**

within any 12-month period to attend to the serious health conditions of themselves or their family members (see D.9. above). An employee may elect to substitute paid leave (sick and/or annual leave, but **not** compensatory time or credit hours) in lieu of unpaid leave under the FMLA, consistent with applicable laws and regulations (see 5 CFR 630.1205). This election may not be denied. However, an employee may not retroactively substitute paid time off for LWOP under the FMLA.

An employee must invoke his or her entitlement to FMLA leave but may not do so retroactively.

Leave taken under the FMLA may be taken under a reduced leave schedule (see D.14 above) or on an intermittent basis. However, this schedule must be medically necessary. The employee must consult with the leave-approving official so they can agree on a schedule,

NIH MANUAL 2300-630-5

PAGE 11

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

approved by the health care provider, which will not disrupt the operations of the organization. Employees and leave-approving officials are encouraged to work together in developing a schedule that meets both the employee's family or medical needs and the organization's need to manage work.

The 12 weeks of unpaid leave is **in addition to other paid time off** (sick leave, annual leave, compensatory time and/or accrued credit hours), available to an employee that may be granted by the leave approving official. However, an employee must obtain approval and/or meet statutory requirements to take additional leave or other periods of paid time off.

Leave taken under the FMLA may be requested for one or more of the following reasons:

The birth of a son or daughter of the employee and the care of a newborn child (within one year after birth);

The placement of a son or daughter with the employee for adoption or foster care (within one

year after placement);

The care of a family member of the employee with a serious health condition; or

A serious health condition of the employee making the employee unable to perform any one or more of the functions of his/her position.

This policy applies to both male and female employees. Both a mother and a father are each entitled to the 12 weeks of unpaid leave for a birth, placement of a child with them for adoption or foster care, or for the care of an eligible family member with a serious health condition.

Unpaid leave requested by an employee who meets the criteria for leave and has complied with the FMLA requirements **must not** be denied.

NIH MANUAL 2300-630-5

PAGE 12

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

When notice of intent to use leave under FMLA is provided, the employee will (1) indicate the type of leave desired, (2) identify the leave as "FMLA leave" for either family leave (for a birth, adoption or foster care or to care for a family member) or medical leave (for the employee's serious health condition), and (3) indicate the beginning and ending dates of the 12-month period of FMLA leave entitlement.

A leave-approving official may require that a request for leave under the FMLA be supported by written medical certification (see 5 CFR 630.1207).

An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the initial need for the leave.

NIH employees who take leave under the FMLA must be returned to their same position upon return from the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions

of employment. This does not apply to an employee who was hired for a specific project or only for a defined period, if the period of employment has expired and the employment would not have otherwise been extended.

Employees in positions that have specific medical standards, physical requirements, or are covered by a medical evaluation program must provide medical certification of their ability to return to work after taking medical leave for their own serious health condition.

See Appendix A for a summary of information on FMLA.

2. **Family Friendly Leave Act (FEFFLA):** In conjunction with the FEFFLA, all employees are entitled to and leave-approving officials must grant up to 40 hours of accrued (or advanced at the discretion of the leave-approving official) sick leave in any leave year, to provide care for a family member as a result of physical or mental illness, injury, pregnancy and childbirth, or medical, dental, or optical examination or treatment or to make arrangements necessitated by the death of a family member or attend the funeral of a

NIH MANUAL 2300-630-5

PAGE 13

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

family member. This may include making funeral arrangements, travel to and from and attendance at the funeral, the reading of a will, and estate settlement. In addition, some employees are entitled up to an additional 64 hours of sick leave, but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours. (The amount of FEFFLA sick leave to which a part-time employee is entitled shall be prorated in accordance with 5 CFR 630.401.)

Medical certification may be requested for sick leave in excess of three consecutive workdays or for shorter periods when the employee has been advised of the requirement.

See Appendix A for a summary of information on FEFFLA.

3. **Expanded Family and Medical Leave Policies:** In

conjunction with a Presidential directive, employees may schedule and should be granted up to 24 hours of leave without pay each year (during any 12-month period) for three purposes:

- a. To allow employees to participate in school activities directly related to the educational advancement of a child. This would include parent-teacher conferences or meetings with child-care providers, interviewing for a new school, or participating in volunteer activities supporting the child's educational advancement. For the purpose of this directive, school refers to an elementary school, secondary school, Head Start program, or a child-care facility.
- b. To allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. Although these activities are not currently covered by the FMLA, the FEFFLA does permit employees to use up to 13 days of sick leave each year for such purposes. However, employees may use up to 24 hours of leave without pay each year for these purposes in cases when no additional leave is available to them.

NIH MANUAL 2300-630-5

PAGE 14

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

- c. To allow employees to accompany an elderly relative (per definition of family member under the FEFFLA) to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities. Although employees can use unpaid leave or sick leave for certain of the activities under the FMLA or FEFFLA, such as caring for a parent with a serious health condition, employees may use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives health or care needs.

Leave-approving officials may require evidence that is

administratively acceptable, including medical certification as appropriate, from an employee who requests leave under this policy.

Additionally, leave-approving officials shall grant employees' requests to substitute paid time off (annual leave, compensatory time off, and credit hours under flexible work schedules), for these family activities when such leave is available to these employees.

Leave for the above purposes shall be scheduled in advance whenever possible. However, employees should be accommodated even when it is not possible to anticipate the need for this leave.

4. **Pregnancy and Childbirth:** Leave-approving officials will be responsive and fair in granting leave for working parents. Requests for sick leave for reasons related to periods of incapacitation resulting from pregnancy, childbirth, and confinement must be granted. Additional annual leave, compensatory time, credit hours or LWOP may be granted, depending on the circumstances and availability of each type of leave and management's needs. The employee is responsible for providing notice substantially in advance (generally at least 30 days) of the anticipated leave dates.

Requests for sick leave for this purpose shall be treated the same as any request for leave to cover a

NIH MANUAL 2300-630-5

PAGE 15

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

medically certified temporary disability. All the sick leave requested must be supported by medical documentation showing that the employee is incapacitated to perform the duties of her position for the period covered by the certificate. Each situation will determine the duration of the incapacitation. However, the woman's health care provider will be the person to determine the length of time she will be under his/her care and incapacitated for work.

The father may request sick leave under the FEFFLA (up to the maximum allowable) to care for the mother during pregnancy or childbirth, including accompanying the

mother to medical examinations or treatments.

Sick leave must not be granted based solely on an employee's (mother or father) responsibility to care for or desire to bond with the infant, after the period of incapacitation. However, the mother or father may request sick leave under the FEFFLA (up to the maximum allowable) to care for the infant in cases of physical or mental illness, injury, or to accompany the infant to medical examinations or treatments.

Additional absence requested by the mother or father to care for the newborn that is not supported by medical documentation may be approved and charged to annual leave, compensatory time, accrued credit hours or LWOP. If, however, the mother or father invokes FMLA within one year of the birth, LWOP (up to the maximum allowable) or an election to substitute available paid leave, must not be denied.

5. **Leave for Adoptive or Foster Parents:** Employees are entitled and leave-approving officials shall grant accrued or accumulated sick leave for purposes of adoption. This entitlement to use sick leave is in addition to an employee's entitlement under FMLA.

Purposes for which an adoptive parent may request sick leave include appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed, including any periods during which an adoptive parent is ordered or required by the adoption agency, by a physician or by a court to

NIH MANUAL 2300-630-5

PAGE 16

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

be absent from work to care for the adopted child.

Additional time requested by the employee not related to purposes of adoption but to care for the adopted child in the first year after placement may be granted and charged to annual leave, compensatory time, credit hours or LWOP. If, however, the mother or father invokes FMLA, LWOP (up to the maximum allowable) or an election to substitute available paid leave, must not be denied.

Annual leave, compensatory time, credit hours or LWOP may also be authorized for purposes of providing foster care. If the foster parent invokes FMLA, within one year of the placement, LWOP (up to the maximum allowable) or an election to substitute available paid leave must not be denied.

6. **Leave for Bone-Marrow or Organ Donation:** An employee is entitled to use a minimum of seven days of paid leave each calendar year (in addition to annual or sick leave available to them) to serve as a bone-marrow or organ donor. This is a special leave category recorded as excused absence. Leave-approving officials may grant more than the minimum seven days of this leave as appropriate.
7. **Voluntary Leave Transfer Program:** The Voluntary Leave Transfer Program allows, with the concurrence of the appropriate NIH officials, unused accrued annual leave of one Federal employee to be transferred to another Federal employee who needs it because of a medical or family medical emergency. Pregnancy or caring for a family member with a life-threatening illness are examples of family medical emergencies. For further information regarding this program, see HHS Circular 630-1.

See Appendix A for a summary of information on the Voluntary Leave Transfer Program.

8. **Compensatory Time:** An employee will be permitted to earn, and the supervisor will grant, compensatory time (see D.6. above) for purposes outlined in this chapter; i.e., for family or parental reasons. The compensatory

NIH MANUAL 2300-630-5

PAGE 17

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

time must be earned before the anticipated absence, if work that cannot be completed during normal working hours is available, and it does not interfere with the efficient accomplishment of the organization's mission.

9. **Miscellaneous Absence for Family Care:** Employees may request and leave-approving officials should approve whenever possible, annual leave, LWOP, and the use of compensatory time and credit hours for some additional

absences for family care. Examples of these circumstances include but are not limited to the following:

- a. when an employee wishes to accompany a family member to personal business appointments;
- b. when an employee wishes to bond with a healthy child (after the first year), for a healthy child whose school is temporarily closed, or for a family member whose day care provider is temporarily unable to provide care; or
- c. when an employee is obligated to attend events such as teacher conferences or other school activities.

In addition to approving requests for leave whenever possible, supervisors are encouraged to consider flexiplace, telecommuting and alternative work schedules to accommodate employees' short and long term medical disability situations and/or accommodate employees' day-to-day family related needs.

G. Other Alternatives

1. **Credit Hours:** At the discretion of the ICD, flexible work schedules may include a provision for the earning and use of credit hours. Both the earning and use of credit hours are subject to advance supervisory approval.
2. **Advance Leave:** An advance of sick leave may be made at any time to an employee with a zero sick leave balance, for any of the reasons that would allow the employee to request sick leave to his/her credit. However, at no

NIH MANUAL 2300-630-5

PAGE 18

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

time may the total sick leave advanced exceed 240 hours or 30 days.

An advance of annual leave may be made to an employee with a zero annual leave balance only in an amount which will not exceed the leave the employee is expected to accrue by the end of his/her appointment or

by the end of the leave year, whichever is sooner.

An employee does not have a vested right or entitlement to advance leave, regardless of the circumstances.

In addition, if leave is advanced, there must be a reasonable expectation that the employee will return to duty.

H. Health Benefits Coverage:

An employee enrolled in a health benefits plan under the Federal Employees' Health Benefits Program (FEHBP) who is placed in a LWOP status as a result of entitlement to leave under FMLA may continue his or her enrollment while in the LWOP status and arrange to pay their share of the premiums on a current basis or when they return to a pay and duty status. In addition, if LWOP granted under the FMLA, when combined with LWOP not granted under the FMLA, causes the employee to exceed 365 days in a non-pay status, coverage will continue if they have paid their share of the premiums on a current basis. After 365 days, if premiums have not been paid, the health benefits enrollment will be terminated. If enrollment is terminated, employees may re-enroll in the FEHBP upon their return from leave under the FMLA to a pay and duty status.

I. Recordkeeping and Reporting Requirements:

The NIH will be responsible for reporting employees' use of leave under the FMLA and FEFFLA as requested by the Office of Personnel Management.

Therefore, individual ICDs will maintain information on each employee using leave under the FMLA and FEFFLA, which will include: (1) The employee's grade, step and rate of basic pay; (2) the occupational series of the employee's position;

NIH MANUAL 2300-630-5

PAGE 19

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

(3) the employee's gender; (4) the number of hours and type of leave taken; and (5) the purpose of the leave, e.g., leave under FMLA (for a birth, adoption or foster care or the care of a family member or medical leave for the employee's serious health condition); sick leave under

FEFFLA for the care of a family member or sick leave due to the death of a family member; sick leave for adoption; or excused absence for bone marrow or organ donation.

This information will be provided to the OHRM upon request.

DATE: 5/15/97

REPLACES: 10/25/93

ISSUING OFFICE: OHRM 402-9484

FAMILY LEAVE POLICIES AND PROGRAMS

	LEAVE PROGRAMS		
	VOLUNTARY LEAVE TRANSFER PROGRAM (VLTP)	FAMILY MEDICAL LEAVE ACT (FMLA)	FAMILY FRIENDLY LEAVE ACT (FFLA)
GOVERNING REGULATIONS/POLICIES	Public Law 103-103, 10/8/93. Permanent program eff. 1/31/94	Public Law 103-3, 2/5/93, effective 8/5/93	Public Law 103-388, 10/22/94, effective 12/2/94
ELIGIBILITY	All Civil Service employees	All permanent Civil Service employees with at least 3 months service and temp. employees with appointment of 13 months or more.	All Civil Service employees
CONDITIONS	Must have a medical emergency and must have exhausted all AL and SL for personal medical emergency, all available SL under FFLA and all AL for family member' emergency. Must have anticipated loss of income (LWOP) of at least 24 hours.	Entitled to total of 12 admin workweeks of unpaid leave in addition to other available paid leave during any 12-month period for: a) birth of child & care of newborn, concluding 1 year after birth; b) placement of child for adoption or foster care, concluding 1 year after placement; c) care of family member" with serious health condition; d) serious health condition of employee.	All may use up to 40 hours of SL to care for family member* and an additional 64 hours of SL provided SL balance does not drop below 80 hours. Care includes making arrangements for and/or attending funeral of family member*.
LIMITATIONS	None	None; employee who meets criteria may not be denied leave. Employer may require medical certification.	Supervisor may ask employee to document need to care for family member*. Total cannot exceed 104 hrs SL each year.
APPLICATION PROCEDURES	Apply in writing to immediate supervisor: name, title, grade; nature of medical emergency, severity & anticipated duration; statement from physician.	Apply to supervisor not less than 30 days before leave is to begin or as soon as practicable, if leave is unforeseeable.	Approved leave-requesting vehicle. Apply to immed. supervisor
REQUIRED APPROVALS	Immediate supervisor, then official designated to approve, i.e., ICD Executive Officer.	Immed. supervisor.	Immed. supervisor
RECORD KEEPING REQUIREMENTS	Approved leave-requesting vehicle; current NIH timekeeping system; manual log, simple & developed locally, to record receipt and amount of donated leave used each pay period, record additions of donated leave rec'd, provide information on recipients leave balance to be restored to donors if not needed.	Timekeeper makes normal leave and LWOP entries in current NIH timekeeping system.	Timekeeper keeps track of number of hours so amount used does not exceed limit (40 hrs SL or 104 hrs SL, whichever applies). Makes normal sick leave entries via current NIH timekeeping system.
TIMEKEEPER REFERENCE	Attachment to Timekeeping Manual 05/01/93, Voluntary Leave Transfer Program	None	None
COMMENTS	More information in HHS Circular 630-1, Personnel Manual, Issue date 7/26/96, updated 12/24/96. NIH does not have a Leave Bank	Upon return, employee must be restored to same position or equivalent. Entitled to maintain health benefits coverage. NIH 2300-630-5	Part-time employees may use a pro-rated amount of SL.

* Family member is defined as parent; spouse; parent of spouse; children & spouses of children; brothers, sisters & spouses thereof; "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

** Family member is defined as spouse; son or daughter; or parent of employee.